

Proposition 34 Reporting Information for State Candidates

FPPC Fact Sheet 34-01, Volume 3

This is the third in a series of fact sheets about Proposition 34, a ballot measure that went into effect on January 1, 2001. Proposition 34 added contribution and voluntary expenditure limits for state candidates and made other major changes to the Political Reform Act.

All of the contribution and expenditure limits and other provisions of Proposition 34 are now in effect, and all future state elections will be conducted under the new law. The Commission has adopted numerous regulations implementing Proposition 34 and the Commission staff has written advice letters on specific issues.

Many questions have been asked about how the law affects future fundraising activities and how funds raised prior to the effective date of Proposition 34 can be spent. We hope this fact sheet will answer most of these questions.

Throughout various publications and this fact sheet, many terms are used that may need further explanation. (For example, “state candidate,” “statewide candidate,” “transfer” and “carryover.”) A brief glossary of terms has been included on the last page. All of the sections of the Political Reform Act (Government Code sections 81000-91014) and FPPC regulations (Title 2, Division 6, of the California Code of Regulations) mentioned in this fact sheet can be found on the Commission’s web site (www.fppc.ca.gov). Also on the web site is the 2002 Addendum to the Commission’s campaign disclosure manuals, which summarizes all of the provisions of Proposition 34 and the regulations adopted in 2001, as well as Commission opinions and other helpful information. The Commission’s advice letters are available on Westlaw and Lexis-Nexis.

1. Effective Date of Proposition 34

The contribution and expenditure limits for State Assembly and Senate races went into effect on January 1, 2001. For statewide offices, the limits went into effect on November 6, 2002. Most of the other provisions of Proposition 34 went into effect on January 1, 2001, including the \$3,000 limit on transfers between state candidates, limits on contributions to political action committees, and the prohibition on contributions made by lobbyists. Post-election fundraising restrictions went into effect on January 1, 2001, for Assembly and Senate candidates, and on November 6, 2002, for statewide candidates.

Proposition 34 also contains some “grandfather” provisions, allowing state candidates to use money raised before January 1, 2001 (November 6, 2002, for statewide candidates) for elections held after those dates.

2. The Adjusted Contribution and Voluntary Expenditure Limits

Proposition 34 added section 83124 to the Political Reform Act, requiring that the contribution and expenditure limits be adjusted according to changes in the Consumer Price Index in January of every odd-numbered year. At its meeting on December 13, 2002, the Commission adopted regulations 18535 and 18545, which establish the increases in the contribution and voluntary expenditure limits as shown in the chart below. The new limits become effective January 1, 2003, for **future** elections. They are **not** applicable to contributions raised for the purpose of paying debt in connection with the 2002 election.

Per election Limits on Contributions to State *Candidates*

Contributor	Legislature	Statewide Elected Officers	Governor
Person	\$3,200	\$5,300	\$21,200
Small Contributor Committee	\$6,400	\$10,600	\$21,200
Political Party	No limit	No limit	No limit

Calendar Year Limits on Contributions to State *Committees*

Contributor	Committee (Not Political Party) for State Candidates	Political Party for State Candidates	Committee/Political Party Not for State Candidates
Person	\$5,300	\$26,600	No limit

Proposition 34 Voluntary Expenditure Limits for Candidates for Elective State Offices

Office	Primary/Special Election	General/Special Runoff Election
Assembly	\$425,000	\$744,000
Senate	\$637,000	\$956,000
Governor	\$6,374,000	\$10,624,000
Lt. Governor, Attorney General, Insurance Commissioner, Controller, Secretary of State, Supt. Of Public Instruction, Treasurer	\$4,249,000	\$6,374,000
Board of Equalization	\$1,062,000	\$1,594,000

3. Answering Your Questions

Fundraising—Statewide Candidates

1. I ran for statewide office in 2002 and won. My 2002 campaign committee has no debt. May I continue to raise funds into that committee?

Answer: Yes. Section 85316 did not go into effect for statewide candidates until November 6, 2002. (Section 83 of Proposition 34.) The Commission has determined that section 85316's restriction on fundraising after an election does not apply to elections held before January 1, 2001 (for state legislative offices) or November 6, 2002 (for statewide offices). (See section 85321 and regulation 18531.6.) Therefore, a committee established before November 6, 2002, for an election held prior to that date may continue receiving contributions. However, transfers to any other committees are subject to all Proposition 34 transfer and attribution rules. The "grandfather" provision of section 85306(c) is only applicable to funds "possessed" on November 6, 2002. (Also see Question 4 below.) This interpretation is consistent with the interpretation applied to legislative candidates in 2001 under regulation 18531.6(a).

2. Are contributions received by the 2002 statewide committee subject to the contribution limits?

Answer: No. (Section 83 of Proposition 34.)

3. If contributions are received into the 2002 committee on or after November 6, 2002, may I use the new funds for officeholder expenses?

Answer: The new funds may be used to pay campaign debts, if any, or for officeholder expenses as noted above. Any funds transferred to a new committee for a future election are subject to attribution and the contribution limits. (Section 85306(a); Regulation 18536. Also see Volume 1 of Fact Sheet 34-01 for detailed information about attribution.)

4. May I solicit contributions into the 2002 statewide committee for the purpose of running for reelection in 2006 or for another office?

Answer: No. Section 85201 requires all contributions received for an election to be placed in a bank account established for that election, and requires all expenditures for the election to be made from the account. Candidates for state office must have a separate bank account and campaign committee for each election and may no longer "redesignate" an existing committee for a future election. (Regulation 18521(a).) A single account and committee may be opened for both the primary and general elections, or separate primary and general accounts and committees may be set up. (Section 85318.) State candidates who send a written solicitation for contributions also must identify the particular controlled committee and specific office for which contributions are being requested. (Regulation 18523.1.)

5. I plan to run for statewide office in 2006 and opened a committee for that purpose before November 6, 2002. Were the contribution limits in effect then?

Answer: Yes. All contributions received for a statewide office in an election to be held after November 6, 2002, are subject to the contribution limits. (See *Fishburn Advice Letter*, No. A-02-271.)

Fundraising—Legislative Candidates

1. My campaign committee for the 2002 election has no debt and a small amount of cash. May I continue to raise funds into that committee?

Answer: No. Effective January 1, 2001, section 85316 prohibits you from raising funds after an election for purposes other than paying net debt. (See regulation 18531.6 for information on fundraising to pay debt.)

2. I won the 2002 election. Is there a way for me to raise funds to pay officeholder expenses?

Answer: The Act does not provide any specific method for officeholders to raise funds for officeholder expenses. However, officeholder expenses may be paid from any committee established for the office that you hold. (Regulation 18525(b).) You may open an account and committee for reelection to the same office. Contributions received for that election may be used for expenses related to your current term of office. (Regulation 18525(b).) All contributions raised into the future election committee are subject to the contribution limits for that election.

3. I cannot run for reelection in 2004 because of term limits. However, the committee I set up for the 2000 election for the same office is still open. May I continue to raise funds into the 2000 committee?

Answer: Yes. Under regulation 18531.6, committees established before January 1, 2001, for an election held prior to January 1, 2001, may receive contributions that are not subject to contribution limits. However, regulation 18404.1 requires the 2000 committee to be terminated within nine or 24 months from the end of your 2000 term of office (the term ending December 1, 2002), depending on whether it has debt.

4. My 1998 committee has been terminated. May I reopen the committee to raise funds for officeholder expenses?

Answer: No. Any committee established after January 1, 2001, for State Senate or Assembly, even if it is set up for an election held prior to January 1, 2001, may receive contributions only to pay net debt from the election for which it is established. Contributions to the committee also would be subject to the contribution limits. (Regulation 18531.6.)

5. My 2002 committee has \$25,000 in cash on hand and \$75,000 in outstanding loans and accrued expenses. May I keep the \$25,000 for officeholder expenses and raise new funds to pay the debt?

Answer: You may only raise new funds to pay “net debt outstanding” under section 85316. Your committee’s net debt outstanding is \$50,000 (\$75,000 in outstanding loans

and accrued expenses, less the \$25,000 in cash on hand). Therefore, only \$50,000 may be raised, plus amounts needed to raise the funds and for certain other purposes. (See regulation 18531.6 for detailed information about calculating net debt and raising funds.) If the \$25,000 is used for officeholder expenses, the committee will not be able to pay all of its loans and accrued expenses from the election.

6. Are contributions received to pay debt from the 2002 election subject to contribution limits?

Answer: Yes, they are subject to the contribution limits for the 2002 primary and general elections. (Section 85316.) For example, an individual whose total contribution to your 2002 committee was \$1,000 in connection with the primary election may contribute up to \$5,000 toward the debt (an additional \$2,000 for the primary election and \$3,000 for the general election). If you lost in the March primary, this individual may only contribute an additional \$2,000.

7. I was elected to the Legislature in 2002. On November 7, 2002, I received a contribution check that was mailed prior to the election. My committee has no debt. May I keep the contribution?

Answer: No. A contribution is “received” on the date the candidate or committee obtains possession or control of it. (Regulation 18421.1.) Because you have no debt, the contribution may not be deposited in the committee account and must be returned within 14 days of receipt. (Regulations 18531.6(d)(3)(B) and 18531.)

Transfers and Carryover

1. I am a member of the Legislature, reelected in 2002. My 2002 committee has \$100,000 in cash on hand and no debt. My 2000 committee is still open with \$50,000 in cash on hand. May I use the money in either committee to make contributions to other state or local candidates?

Answer: Yes, either committee may make contributions. However, contributions to other state candidates are subject to the \$3,000 intercandidate limit (adjusted to \$3,200 effective January 1, 2003). (Section 85305; Regulation 18535.) Though you have two committees, you still may not give a total of more than \$3,200 per election to another state candidate. Contributions to local candidates are not limited under the Act, but the candidate may be subject to limits under local rules. Once you leave office and the campaign funds become “surplus,” you may no longer contribute to other state or local candidates. (Section 89519.)

2. May I make a contribution over the limit from either committee if it is made to a committee established before January 1, 2001?

Answer: No. Section 85305 prohibits a state candidate from making a contribution of more than \$3,000 (\$3,200 effective January 1, 2003) to another state candidate. It does not matter whether the committee receiving the contribution was established before January 1, 2001. (Regulation 18535(d); Wasson Advice Letter, No. I-02-048.)

3. *May I use the money in either committee to make a contribution to a political action committee or a political party?*

Answer: Yes. Contributions to political action committees are subject to a contribution limit of \$5,000 per calendar year (\$5,300 effective January 1, 2003), and contributions to political parties are limited to \$25,000 per calendar year (\$26,600 effective January 1, 2003), if the funds will be used to make contributions to state candidates. (Section 85303.) Contributions over these limits may be made to a political action committee or political party, but must be used for purposes other than making contributions to state candidates. In addition, a candidate may not make a contribution to a committee for the purpose of making independent expenditures to support or oppose other candidates. (Sections 85303(c) and 85501.)

4. *I was reelected to statewide office on November 5, 2002. I have money left over in my 1998 committee, all raised before November 6, 2002. May I use the funds for officeholder expenses or for a future election?*

Answer: The funds may be used to pay campaign debts, if any, or for officeholder expenses. They also may be transferred without attribution to a new committee for a future election. (Section 85306(c).) All expenditures of campaign funds must have a political, legislative, or governmental purpose. (Sections 89510-89518.) The 1998 committee must be terminated within nine or 24 months of the end of your 1998 term of office (the term ending January 5, 2003), depending on whether it has debt. (Regulation 18404.1.)

5. *Some of the cash held by my 1998 statewide committee was received in the form of a loan prior to November 6, 2002. In addition, on November 6, 2002, the committee had other assets, including office equipment, contributor lists, and donated artwork. May the loan proceeds and assets be transferred without attribution and used for the 2006 election?*

Answer: Yes. All funds and assets held by the committee on November 6, 2002, may be transferred, without attribution, to a committee established for a future election. (Section 85306; Fishburn Advice Letter, No. A-02-271.)

6. *I was elected to the Assembly in 2000. My 2000 committee had \$50,000 in cash on January 1, 2001, and was redesignated after January 1, 2001, for the 2002 election. The committee now has \$100,000 in cash on hand and no debt. May I transfer any of the current cash on hand to a future election committee without attribution?*

Answer: *The answer to this question has changed as a result of regulatory action taken by the Commission at its January 17, 2003 meeting. (Regulation 18530.2.) Please call the toll-free advice line at 866-ASK-FPPC for more information.*

7. *Would the same answer apply if the funds had been transferred from a 2000 committee to a newly formed 2002 committee?*

Answer: *The answer to this question has changed as a result of regulatory action taken by the Commission at its January 17, 2003 meeting. (Regulation 18530.2.) Please call the toll-free advice line at 866-ASK-FPPC for more information.*

Surplus Funds—All Candidates

1. I was elected to the State Senate in 2002. The funds held by the committee I established in 2000 to run for the State Assembly became surplus on December 1, 2002. May I use the funds in that committee to pay Senate officeholder expenses?

Answer: No. Officeholder expenses may only be paid from a committee established for the office that you hold. (Regulation 18525(b).)

2. May I transfer the funds, with or without attribution, to a new committee for reelection to the Senate in 2006?

Answer: No. The “surplus” funds may not be used to run for office. Section 89519 lists the types of payments that can be made from surplus funds.

3. I ran for the State Assembly in 2002 and lost in the March primary. May I use funds in my 2002 Assembly committee, to run again? All of the funds were raised after January 1, 2001.

Answer: No. The funds in the committee became “surplus” on June 30, 2002, and may no longer be used to run for office. (See section 89519.)

4. Glossary

Attribution

When campaign funds are transferred from one of a state candidate’s campaign accounts to another, in most cases the funds must be “attributed” under section 85306(a). This means the committee making the transfer must assign, or attribute, the funds to specific contributors to that committee as if those contributors were making contributions to the committee receiving the transferred funds. The transfer is subject to the contribution limits for each contributor. (See regulation 18536; also see Fact Sheet 34-01, Volume 1, for an example.)

Elective State Office and Statewide Office

Statewide offices include the following: Governor, Lieutenant Governor, Attorney General, Insurance Commissioner, Controller, Secretary of State, Treasurer, Superintendent of Public Instruction, and member of the State Board of Equalization. (Section 82053.)

The term “elective state office” includes all of the statewide offices, plus members of the Legislature and members elected to the Board of Administration of the Public Employees Retirement System. (Section 82024.)

References to “state candidate” and “state office” generally mean candidates for elective state office, while references to “statewide candidate” and “statewide office” mean only the statewide offices listed above.

Net Debt

Section 85316 says after an election, a state candidate may only receive new contributions to pay “net debts outstanding” from the election. Net debt is the amount owed by the candidate’s committee in loans and accrued expenses, less the committee’s cash (including investments like treasury bills, certificates of deposit, etc.) and any amounts owed to the committee. Funds may also be raised to cover the cost of raising funds to pay debt, and for certain administrative costs. (See regulation 18531.6(d).)

Surplus Campaign Funds

Section 89519 restricts how campaign funds may be used after they become “surplus” funds. Campaign funds become surplus when an officeholder leaves office, or at the end of the postelection reporting period (June 30 for elections held during the first six months of the year, or December 31 for elections held during the last six months of the year) following the defeat of a candidate, whichever occurs last.

The most important thing to remember about surplus funds is that they may not be used to run for office. They may not be transferred, with or without attribution, to a new committee for a future election, and they may not be carried over to a future election, even for the same office. They also may not be contributed to other state or local candidates, or to other committees for the purpose of supporting or opposing state or local candidates. Section 89519 sets out the permissible uses of surplus funds.

Transfer and Carryover

The law allows candidates to transfer funds among their own controlled committees. Proposition 34 places restrictions on transfers of funds in section 85306. Funds transferred to a committee set up for a state office must be attributed to specific contributors subject to the contribution limits. (Section 85306(a).) Funds held on the effective date of Proposition 34’s contribution limits (January 1, 2001, for legislative offices and November 6, 2002, for statewide offices) are covered by the “grandfather” provisions in section 85306(b) and (c) and may be transferred without attribution. (See regulation 18536 for detailed information about attribution.)

Section 85317 allows funds raised for an elective state office to be “carried over,” without attribution, to the **next** election to the **same** office. The carryover provision applies only to funds held in a committee established for an election held after January 1, 2001 (November 6, 2002 for statewide candidates), and the carryover must take place after the election for which the funds were raised. “Surplus” funds may not be carried over. (Section 85317; Regulation 18537.1.)